

REMARKS

This is in full and timely response to the above-identified Office Action. The above listing of the claims supersedes any previous listing. Favorable reexamination and reconsideration is respectfully requested in view of the preceding amendments and the following remarks.

Abstract

The abstract has been reviewed and amended in a manner to be between 50 and 150 words in length and to be both clear and concise.

Rejections under 35 USC § 112

The claims have been amended in a manner which renders them both clear and distinct. Claim 3 recites the FERM BP deposit numbers mentioned in this rejection. The specification also recites these numbers, see paragraph [0013] for example.

Rejections under 35 USC § 102

The rejection of claims under 35 USC § 102(b) is respectfully traversed. The claims have been amended in a manner which distinguishes over the cited references. Claim 1 has been amended to assume a form which renders the product-by-process positions advanced in this Office Action, moot.

These amendment also call for the fungus to produce chanoclavine as the final metabolic product and for further

metabolic generation to be absent. None of Porter et al., Cagas et al. or Petroski et al., which are applied under § 102(b), disclose this.

That is to say, while Porter et al., Cagas et al. and Petroski et al. disclose chanoclavine, none are such as to disclose or suggest that chanoclavine is the final metabolic product. For example, Cagas at Table 1 (P366) and Table 2 (P367) shows that chanoclavine is generated, but goes on to demonstrate that ergovaline is subsequently metabolized. This, as disclosed in paragraph [0016] of the instant specification, is a toxic alkaloid that is avoided with the claimed invention. Indeed, the above mentioned art is such that chanoclavine is an intermediate product which is consumed in the metabolism of ergopeptine which becomes the final product.

Thus, irrespective of the fact that the product-by-process position taken in this rejection is mooted by the amendments, it is clear that the products of the three references which are relied upon for rejection, contain toxic alkaloid type material and that the processes which produce these are obviously such that the final metabolic product which is produced is not chanoclavine *per se*. For at least this reason they cannot be relied upon to anticipate chanoclavine as a final metabolic product.

It is further clear from the data which is provided in the applied references, that chanoclavine is not continuously

yielded and thus not able to accumulate in the tissue of the infected plants. To further clarify the claimed subject matter, the claims have been amended to call for attributes wherein chanoclavine is continuously yielded and thus able to accumulate in the tissue of the plants infected with the claimed fungus. Support for these amendments is found in at least paragraph [0018] of the instant specification.

Conclusion

It is respectfully submitted that the claims as they have been amended are allowable over the art which has been applied in this Office Action. Favorable reconsideration and allowance of this application are courteously solicited.

If any further correction is required, please contact the undersigned agent.

Respectfully submitted,


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